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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/936,974	01/23/2002	Mark Gary Mullane	P25.400 USA	3038

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EXAMINER

WEBB, GREGORY E

ART UNIT	PAPER NUMBER
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1751

DATE MAILED: 06/16/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/936,974

Applicant(s)

MULLANE, MARK GARY

Examiner

Gregory E. Webb

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM
THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 03 March 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 41-83 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 62 and 70-79 is/are allowed.
- 6) ☐ Claim(s) 41, 42, 45-61 and 80-83 is/are rejected.
- 7) ☐ Claim(s) 43, 44 and 64-69 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Response to Amendment

1. The following is in response to the applicant's amendments and arguments presented 3/3/04. Based on the applicant's amendments to the claims, all previous rejections to the claims are withdrawn.
2. The applicant's amendments have further defined the "first cleaning agent", "second cleaning agent" and "third cleaning agent" to actually specify specific compounds. The "first cleaning agent" is now defined as a builder. The "second cleaning agent" is now defined as an oxygenated solvent. The "third cleaning agent" is now defined as specific solvents selected from a significantly reduced Markush group.

Election/Restrictions

3. Newly submitted claims 80 and 81 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: The applicant's claims are directed to a tank. The applicant's original claims made no reference to containers. Although the claims depend from a process, the claims are clearly directed to the apparatus and are thus withdrawn from consideration.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 80-81 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Response to Arguments

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4. Applicant's arguments with respect to previously presented claims have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claim 65 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

7. The applicant's claim 65 depends from claim 64 which requires the composition to be alkaline. The applicant then defines the pH of the composition in claim 65 to be acidic (i.e. pH of 6.5). It is not possible for a composition to be alkaline and have a pH of less than or equal to 7.0.

8. The examiner refer to the following definition for support for the term "alkaline" as generally accepted by chemists:

alkaline

adj : (chemistry) relating to or containing an alkali; having a pH greater than 7;
"alkaline soils derived from chalk or limestone"

9. Thus the applicant's claim is contrary to the accepted chemical definition of alkaline.

Claim Rejections - 35 USC § 102/103

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10. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

13. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

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14. Claims 41, 42, 45, 48-54, 57-61, 63, and 80-82 are rejected under 35 U.S.C. 102(b) as being anticipated by Mitchell et al (US 4,180,472).

15. Mitchell teaches in claim 1, compositions containing 20-97% fatty acid esters containing a C7-C17 fatty acid group and a alkyl group of C1-C10. Mitchell further teaches the preferred use of the methyl esters of fatty acids of C8-C18 (see col. 4, lines 45-55).

16. In claim 1, Mitchell further teaches the use of 0-77% builders including several alkaline agents such as the polyphosphates and carbonates. In example IX, Mitchell teaches a composition with a builder concentration of approximately 2%.

17. In example VII, Mitchell teaches the use of a solid detergent which is diluted in water to form an aqueous composition. Mitchell teaches the use of methyl esters of coconut fatty acid. The granular detergent contains in dilute form 3% of the active composition (see col. 11, lines 1-13). Therefore the dilute composition of example VII contains 0.8% fatty acid methyl ester, 0.25% alkaline builders (i.e. sodium sulfate, magnesium sulfate, sodium carbonate), and water.

18. Concerning the oxygenated solvent, in examples V, IX Mitchell teaches the use of short chain alcohols in amounts ranging from 2% to 5% of the net composition.

19. Claims 41, 42, 45-54, 57-61, 63, and 80-83 are rejected under 35 U.S.C. 102(b) as being anticipated by Howe (US 5,494,611).

20. Howe teaches a degreasing composition in example 1 containing water, 16% surfactants, 5% coconut fatty acid esters, 2% propylene glycol butyl ether, and 2% builders. Howe further teaches the addition of additive such as thickeners, dyes, perfumes, etc. Howe's composition contains alkaline salts such as the tetrasodium EDTA and alkaline amines such as the diamine.

As the composition of example 1 contains no acidic agents, the composition can safely be considered alkaline.

21. Howe teaches the preferred amount of surfactant to be in the range of 5-25% of the composition (see col. 4, lines 1-10).
22. Howe teaches the dilution of the composition in amounts from 1 part cleaner to 25-200 parts water.
23. Howe teaches their compositions to be low-foaming (see table I).
24. Howe generally teaches the fatty acid group of the ester to be C6-C18 alkyl chain (see col. 3, lines 25-58).
25. Claims 41, 42, 45-53, 55-61, 80-83 are rejected under 35 U.S.C. 102(b) as being anticipated by Good (US 5,877,133) or alternatively are rejected under 35 U.S.C. 103(a) as being rendered obvious by Good.
26. Good teaches in examples 1 to 1D compositions containing 26.5% methyl esters of fatty acids, 10% nonionic surfactants (Surfonic N-60; ethoxylated alkyl phenol), 5.9% propylene glycol butyl ether, 4.2% alkaline potassium hydroxide, and water.
27. Concerning the amount of ester and water, Good teaches the dilution of these composition (see col. 5, lines 21-26). Furthermore, Good teaches the ratio of the ester to the surfactant to be in the range of 2:1 to 1:2 and a preferred range of 1.25:1 to 1:1.25. In Table 1, Good teaches a variety of composition all containing 10% surfactant. Maintaining this level and adjusting the ester to the preferred range would yield compositions 5-20% ester or preferably containing 8-12.5% methyl ester.

28. Concerning the additive, Good teaches additives (see col. 5, lines 30-35). Concerning the pH Good teaches a pH of 10 (see col. 5, lines 13-16). Concerning the intended use, Good teaches the use of the composition on various substrates including rags, mops, and the like.

29. Concerning the applicant's claims 80 and 81, although these claims depend from a process claim, they are in fact directed

Allowable Subject Matter

30. Claims 43, 44, 64-69, are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

31. The prior art fails to teach the combination of the benzalkonium chloride with the solvent in the percentages required by instant claim 43.

32. Concerning claim 44, and 64-69 the prior art fails to teach the combination of the pyrophosphoric acid or polyphosphoric acid with the solvent in the percentages required by instant claim 44.

33. Claims 70-79 are allowed. The prior art fails to teach the applicant's specific method of neutralizing carpet cleaning composition in the pH required by the instant claims.

34. Claim 62 is allowed. The prior art fails to teach the use of pyrophosphoric acid in combination with the fatty acid alkyl ester.

Conclusion

35. Concerning the Motsenbocker reference and the Baker et al reference, these reference have been cited to provide a further record of state of the art composition using fatty alkyl esters.

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36. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory E. Webb whose telephone number is 571-272-1325. The examiner can normally be reached on 9:00-17:30 (m-f).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta can be reached on 571-272-1316. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'Gregory E. Webb', with a large, stylized loop at the end.

Gregory E. Webb
Primary Examiner
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gw